UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALANA HILLEN, Plaintiff, v. BLISTEX, INC., SERVE AT: Blistex, Inc. Corporate Headquarters 1800 Swift Dr., Oak Brook, IL 60523 Defendant.	)))))))))))))	 Case No.: 17-cv-2074 Hon. **COMPLAINT (CLASS ACTION)**

CLASS ACTION COMPLAINT

Plaintiff Alana Hillen brings this action on behalf of herself and all other similarly situated persons against Defendant Blistex, Inc. and alleges those facts as to her own purchases and experiences based upon her personal knowledge and all other facts based upon the investigation of counsel:

THE PARTIES

1. Plaintiff Hillen is, and at all relevant times was, a citizen of the State of California and a resident of North Hollywood in Los Angeles County. Plaintiff is a regular purchaser of Blistex products, including its Medicated Lip Ointment. Until January 2017, she was neither aware nor informed by Defendant that a significant portion of product is inaccessible because of the tube design.

2. Defendant ("Blistex") is a private company founded in 1947 and has become one of the nation's largest producers of lip care products, including its popular Medicated Lip Ointment. Defendant's headquarters is located in Oak Brook, Illinois.

3. Plaintiff brings this class action lawsuit against Blistex for the defective design of and misleading label on the product, Blistex Medicated Lip Ointment ("Lip Ointment"). The Lip Ointment tube utilizes a hollow dispenser that traps approximately 23% of the Lip Ointment. The trapped Lip Ointment is undetectable to most consumers, meaning Plaintiff and the Class have been unknowingly robbed of nearly a quarter of the product, unexpectedly disposing of tubes containing a significant amount of Lip Ointment, and unnecessarily purchasing additional tubes of product.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1332(d), the Class Action Fairness Act, which provides Federal Courts with original jurisdiction for cases where any member of the plaintiff class is a citizen of a state different from any defendant, and where the amount in controversy exceeds $5,000,000, exclusive of interest and costs. Plaintiff, being a resident of North Hollywood, California, is diverse from Defendant, being headquartered in Oak Brook, Illinois, and Plaintiff alleges her claims and the claims for all individual members of the Class exceeds $5,000,000 in the aggregate, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant because Defendant's principal place of business is located in Oak Brook, Illinois, Defendant conducts business in Illinois, and a substantial portion of the wrongdoing alleged by Plaintiff occurred in Illinois and in this District.

6. This Court is the proper venue for this case pursuant to 28 U.S.C. § 1391(b) because the Defendant operates its principal place of business in this district, and a substantial

part of the conduct, events, and omissions giving rise to the claims of the Plaintiff and Class occurred in this District.

STATEMENT OF FACTS

A. Blistex, Inc. and Blistex Medicated Lip Ointment.

7. Blistex is a privately held corporation and is one of the largest developers and manufacturers of lip care products in the United States. In 1998, Blistex and ChapStick, Blistex's primary competitor, were estimated to account for approximately half of the U.S. market share of lip care products. Blistex's revenue is approximately $23 to $137 million per year. ChapStick has comparable revenues.

8. Blistex sells a variety of lip care products. A majority of the products are available in a lipstick-like tube. These products include: Blissful Butters, Ultra Rich Hydration, Simple and Sensitive, Soft & Lush, Silk & Shine, Deep Renewal, Complete Moisture, Nurture & Nourish, Lip Vibrance, Five Star Lip Protection, Herbal Answers, Medicated Balm, Medicated Berry Balm, Medicated Mint Balm, Raspberry Lemonade Blast, Fruit Smoothies, and Orange Mango Blast Balm. As with most lipstick-like designs, the product is obtained through a twist mechanism which raises the product above the tube allowing it to be applied directly to one's lips. Through this mechanism, consumers can access and use essentially all of the purchased product.

9. Blistex uses two other common designs: a "bliss flip" and a small jar. The bliss flip contains the product in an egg-shaped shell, allowing the product to be applied directly to one's lips. The small jar contains the product and is designed to be applied to the lips or other affected areas by use of one's fingers. As with the lipstick-like design, the bliss flip and small jar permit consumers to use essentially all of the purchased product.

Table 1: Blistex Products Using Common Lip Care Product Designs.

Blistex
MEDICATED LIP BALM

Blistex Medicated Lip Balm with a lipstick-like design.[1]

Introducing
Blistex
ultra moisturizing
bliss flip
Blistex
soft & silky
bliss flip
FLIP-UNDER CAP
FLIP-UNDER CAP
new
new

Blistex Bliss Flip design with the product in an egg-shaped shell.[2]

LIP MEDEX
Blistex
COOLING RELIEF FOR LIPS
EXTERNAL ANALGESIC/ LIP PROTECTANT
NET WT. .25 oz (7g)
RESTORES MOISTURE BALANCE
LIP MEDEX

Blistex Lip Medex with the product in a small jar.[3]

10. The lipstick-like tube, the bliss flip design, and the small jar are the most common tube designs for lip care products. For example, both ChapStick and Evolution of Smooth ("EOS") almost exclusively use the lipstick-like tube—ChapStick's most common design—and the bliss flip design—EOS' most common design—for their lip care products.

11. The product at issue in this case is Blistex Medicated Lip Ointment. The Lip Ointment is designed for two purposes. The first is to help heal chapped lips. Directions on the label recommend applying the product to "the affected area not more than 3 to 4 times daily." The second is "to smooth lip texture before applying color." The package recommends the user "apply liberally" before applying color.

12. Blistex sells millions of tubes of Medicated Lip Ointment every year. Outside of Blistex Medicated Lip Balm—which comes in a lipstick-like tube—the Lip Ointment is the most widely available Blistex product. In Illinois, the Lip Ointment can be purchased in-store at:

[1] *Blistex Lip Balm, Medicated, SPF 15, 0.15 oz (4.25 g)*, Riteaid.com (last visited Feb. 2, 2017), https://www.riteaid.com/shop/blistex-lip-balm-medicated-spf-15-0-15-oz-4-25-g-8010825.

[2] Blistix.com (last visited Feb. 2, 2017), http://www.blistex.com/.

[3] *Blistex Lip Medex Analgesic Lip Protectant*, Walgreens.com (last visited Feb. 2, 2017), https://www.walgreens.com/store/c/blistex-lip-medex-analgesic-lip-protectant/ID=prod1388-product

AAFES, Albertson's, Cub Foods, CVS, DeCA, Dollar General, Family Dollar, Hy-Vee, Jewel-Osco, Kroger, Meijer, NEXCOM, Osco Drug, Schnucks Markets, Shopko, Target, Wal*Mart, and Walgreens. In California, the Lip Ointment can be purchased at AAFES, Albertson's, CVS, DeCA, Dollar Tree, NEXCOM, Raley's & Bel Air Supermarkets, Ralph's Grocery, Rite Aid, Safeway, Sav-on Drugs, Shopko, Target, Von's, Wal*Mart, and Walgreens. Additionally, the Lip Ointment is available nationwide online at Amazon.com and drugstore.com (now operated by Walgreens).

13. The Lip Ointment comes in a uniquely designed tube. The product is held within a flexible tube, much like a miniature tube of toothpaste. Fixed atop the tube is a hard, plastic dispenser. The hard, plastic dispenser is hollow and retains a significant volume of empty space, especially in comparison to the volume of the tube.

Table 2: Blistex Medicated Lip Ointment.

Blistex
MEDICATED LIP OINTMENT

Blistex Medicated Lip Ointment, displayed with its cap.

Blistex
MEDICATED LIP OINTMENT

Blistex Medicated Lip Ointment, displayed without its cap, showing the dispenser.

14. Normal use of the product entails squeezing the tube which pushes the Lip Ointment through the plastic dispenser and out the opening at the tip. The plastic dispenser can then be used to spread the Lip Ointment to the desired area.

15. Unlike the bliss flip, lipstick-like tube, and small jar, the Lip Ointment's tube design prevents a significant amount of the Lip Ointment from being used. The design flaw stems from the product's large plastic dispenser affixed atop the tube. The hard plastic dispenser, while appearing solid, is actually hollow. When the tube is squeezed, product builds up in the dispenser. Thus, when the tube appears empty, product remains trapped in the dispenser.

16. Because of the dispenser's defective design, consumers receive approximately 4.65 grams of the Lip Ointment through normal use (i.e. squeezing the tube to dispense the product). This is a full 1.45 grams less than the 6 grams listed on the product label. Consumers are losing approximately 23% of the product because of the dispenser design. After only five purchases of the product, consumers have already lost over an entire tube of Lip Ointment in value.

17. Consumers have little opportunity to discover the significant portion of product trapped in the dispenser. The dispenser appears to be solid, even though it is hollow. Consumers cannot see that Lip Ointment is trapped in the dispenser because the dispenser is opaque. Nor can consumers feel additional product in the dispenser because the dispenser is hard and cannot be squeezed. Blistex provides no indication to its consumers that a significant amount of the Lip Ointment is trapped in the plastic dispenser.

18. Thus, when consumers believe they have used the entire tube, nearly a quarter of the product remains hidden, trapped in the dispenser. Unaware of the remaining product and unable to discover it, consumers unknowingly toss away 23% of the Lip Ointment believing they used the entire tube. Not only did consumers lose the portion of product trapped in the dispenser, they must also purchase another tube of Lip Ointment prematurely.

19. Those consumers who have learned of the remaining product can theoretically cut the flexible portion of the tube and use a cotton swab to remove the Lip Ointment. This is messy and inconvenient, and leaves any remaining product in an unusable container, cut-open and exposed to air. As such, any remaining product will be ruined and these consumers must purchase a new tube of Lip Ointment. Most consumers however, will not be aware that the dispenser has trapped an unexpectedly large amount of the Lip Ointment because consumers are less familiar with the Lip Ointment's unusual design and because the usual lip care product designs permit use of essentially all of the product.

20. Blistex is certainly aware of the flaw in its product design. As Blistex boasts, its corporate headquarters in Illinois was designed to provide "pinpoint control of every phase of [its] business from product formulation and testing to manufacturing and marketing."[4] Because Blistex intentionally designed the dispenser to be hollow, Blistex is also aware that nearly a quarter of the Lip Ointment is trapped within the dispenser after normal use and is unusable.

21. No functional justification exists for the hollow plastic dispenser. The product would function equally well with a solid plastic dispenser, a thin or smaller dispenser, or a flat cap. In fact, in other countries, including the United Kingdom, similar Blistex products come in a tube with a significantly smaller dispenser.

22. The alternative nozzle design used in foreign markets is superior compared to the design used in the United States that deceives consumers.

23. Indeed, Blistex sold in the United Kingdom does not feature the deceptively designed plastic dispenser and instead uses narrow, needle-like dispensers that minimize the amount of product retained in the package:

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[4] *About Blistex*, Blistex.com (last visited Jan. 30, 2017), http://www.blistex.com/about-blistex/.

Table 3: Alternative Dispenser Designs Sold in the United Kingdom.

VALUE SIZE
Blistex
MEDICATED
LIP OINTMENT
Helps Heal Severe Dryness
And Relieve Cold Sores
Penetrating
Medication
And Moisture
VALUE
SIZE
Blistex

Blistex Medicated Lip Ointment Value Size, with a smaller dispenser, available in the United Kingdom.[5]

Blistex
Relief
Cream
Relief Cream
Strong ammonia
solution 0.100% w/w,
Aromatic ammonia
solution 6.040% w/w,
Liquefied phenol
0.494% w/w.
Medicated relief for
occasional cold sores,
cracked, chapped
& sore lips.

Blistex Relief Cream, with a smaller dispenser, available in the United Kingdom.[6]

24. Upon information and belief, the deceptively designed hard tube nozzle is primarily sold in the United States.

25. Blistex could also utilize the overwhelmingly popular tube designs used for other lip care products, like the lipstick-like tube, the egg-shaped shell, or the small jar. Of Blistex's twenty-three lip care products, twenty-one already use one of these three designs.[7]

26. These designs are available even though the Lip Ointment is soft, unlike some lip balms. Since 2009, Blistex has used a lipstick-like tube for Blistex Lip Massage, a soft lip balm.[8] Blistex Lip Massage was designed to "marry the two consumer favorites – a soft balm and

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[5] *Blistex Medicated Lip Ointment, 0.35 oz*, Amazon.co.uk (last visited Feb. 2, 2017), https://www.amazon.co.uk/gp/product/B003UQFVPK/ref=ox_sc_act_title_1?ie=UTF8&psc=1&smid=A28J85S4FOV98D.

[6] *Blistex Relief Cream*, Amazon.co.uk (last visited Feb. 2, 2017), https://www.amazon.co.uk/Blistex-150080-Relief-Cream/dp/B008FMJT5C/ref=sr_1_3_a_it?ie=UTF8&qid=1486059684.

[7] *Products*, Blistex.com (last visited Jan. 30, 2017), http://www.blistex.com/products/.

[8] Katie Nichol, *Blistex Launches First Soft Lip Balm in Solid Tube*, Cosmetic Design (Nov. 3, 2009), http://www.cosmeticsdesign.com/Market-Trends/Blistex-launches-first-soft-lip-balm-in-solid-tube.

durable stick."[9] Despite that goal, Blistex Medicated Lip Ointment—one of Blistex's most popular products—never received the same treatment.

27. The intentional design and continued use of the dispenser despite its known flaw confirms Blistex's intent to deceive consumers. The Food and Drug Act considers any cosmetic to be misbranded if the container "is so made, formed, or filled as to be misleading."[10] Consumers expect to be able to use nearly the entire amount listed on the product label. However, because of the Lip Ointment dispenser and tube design (the container), consumers are unable to use nearly a quarter of the product. The label is misleading because of the discrepancy in the amount listed on the label and the amount of Lip Ointment that is actually accessible and usable.

28. This type of deception is akin to "bigger package, same or less quantity" mislabeling.[11] In this type of labeling deception, producers use larger packaging than their competitors to give the appearance that a greater amount of product is stored within; but, despite the packaging size, the container has the same quantity as or less quantity than competitors.[12] The packaging deceives consumers into falsely believing the container has more product than it actually has.

29. Blistex's deception is a type of "bigger package, same or less quantity" mislabeling. Blistex can claim on its label and in its advertising that Blistex Medicated Lip Ointment contains ".21 oz (6g)." That label encourages consumers to purchase Blistex over products with less listed quantity or a higher price per quantity. However, consumers, including

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[9] *Id.*

[10] 21 U.S.C. § 362(d)(2012).

[11] European Parliament Policy Department A: Economic and Scientific Policy, *Briefing Paper on Misleading Packaging Practice* §§ 1.1.1-1.1.2 (2012).

[12] *See, e.g.*, *id.*

Plaintiff and the Class, are misled. Blistex bases its price off of the full 6 grams of Lip Ointment as listed on the label; but, consumers do not receive the full 6 grams. Instead, consumers receive approximately 4.65 grams.

30. To emphasize the effects of "bigger package, same or less quantity" mislabeling, compare Blistex Medicated Lip Ointment to EOS Lip Balm Stick Pomegranate Raspberry. On Walgreens.com, Blistex Lip Ointment costs $2.59 per tube, or $12.33 per ounce.[13] EOS lip balm costs $3.99 per tube, or $14.25 per ounce.[14] Blistex appears to be the better value. However, Blistex's price per ounce is artificially low because the amount of Lip Ointment listed on the label includes the portion of unusable Lip Ointment. Using the amount of Lip Ointment consumers can actually use, the Medicated Lip Ointment's price per ounce is closer to $15.91. While Blistex appears to be the better value, it is not. Blistex's mislabeling is a benefit against its competitors.

31. Price and value comparisons between products are important for consumer purchasing decisions. Federal Trade Commission regulations require the "net quantity of contents [to be] expressed in terms…so as to give accurate information regarding the net quantity of contents thereof, and thereby facilitate value comparisons by consumers."[15] Although Blistex lists the literal amount of Lip Ointment in the tube on the label, the inaccessibility of 23% of the product renders the label inaccurate and misleading. Blistex's misleading label thwarts consumer value comparisons.

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[13] *Blistex Medicated Lip Ointment for Severe Dry Lips and Relief from Cold Sores*, Walgreens.com (last visited Jan. 30, 2017), https://www.walgreens.com/store/c/blistex-medicated-lip-ointment-for-severe-dry-lips-and-relief-from-cold-sores/ID=prod6040402-product.

[14] *EOS Lip Balm Stick Pomegranate Raspberry*, Walgreens.com (last visited Jan. 30, 2017), https://www.walgreens.com/store/c/eos-lip-balm-stick-pomegranate-raspberry/ID=prod6329803-product.

[15] 16 C.F.R. § 500.7 (2017).

32. Blistex benefits because of its deceptive design and labeling in terms of Plaintiff and the Class' purchasing decisions. Consumers, unaware of the portion of Lip Ointment collected in the dispenser, unnecessarily purchase additional tubes of the Lip Ointment increasing Blistex's annual sales and profits. With consumers purchasing new tubes of Lip Ointment more frequently, Blistex's revenues are boosted by as much as 23%, resulting in millions of dollars in additional revenue per year.

33. While Blistex benefits, Plaintiff and the Class lose. Consumers pay for the full 6 grams of product, as indicated on the label, but can only use approximately 4.65 grams. Plaintiff and the Class, however, expect to be able to use essentially all of the Lip Ointment because of their experience with other lip care product designs, like the lipstick-like tube, egg-shaped shell, and small jar. The difficulty in discovering that a portion of the Lip Ointment is not accessible and consumer expectations that essentially all of the product is usable means consumers are completely unaware of the significant loss of product caused by Blistex's defective dispenser design.

34. The Lip Ointment's packaging and design misleads consumers regarding the amount of usable product within the tube. The tube size, the label, and consumers experience with other lip care product designs caused Plaintiff and the Class to believe they were receiving 6 grams of usable product. Consumers do not expect a significant portion of Lip Ointment to become trapped in the dispenser rendering it unusable. Thus, consumers tossing away a seemingly empty tube of Lip Ointment do so prematurely because nearly a quarter of the product remains in the dispenser; and, consumers purchasing a new tube of Lip Ointment do so unnecessarily.

B. Plaintiff Hillen and Her Use of Blistex.

35. Plaintiff Hillen is a regular user of lip care products, including those manufactured by Blistex. She purchases approximately four to five tubes of Blistex Medicated Lip Ointment per year. She uses the Lip Ointment for both of its suggested purposes: as a means of treating dry lips and as a base to smooth lips before applying color.

36. Plaintiff uses her lip care products to completion before purchasing another lip care product and believed she had maintained this practice with Blistex Medicated Lip Ointment until learning that a significant portion of the Lip Ointment was being trapped in the dispenser.

37. Plaintiff was not aware of the significant portion of unusable Lip Ointment until January, 2017. Neither the product package label for the Lip Ointment nor any of Blistex's advertisements informed her that the dispenser retained nearly a quarter of the product.

38. Plaintiff was unaware of the amount of product that was rendered unusable by the tube design. In her experience with other lip care products and different tube designs, almost all of product is usually accessible. She believed that when the tube holding the Blistex Medicated Lip Ointment was empty, she had used nearly all of the product.

39. Had Plaintiff been informed that nearly a quarter of Blistex Medicated Lip Ointment was unusable because of the product's design, she would have purchased a substitute product that did not have a deceptive design.

CLASS ALLEGATIONS

40. Plaintiff brings this action on behalf of herself, and as a class action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class:

> All persons who are residents of the United States who purchased Blistex Medicated Lip Ointment within three years of the date of

the filing of this Complaint (or after the longest applicable statute of limitations).

41. Excluded from the Class are: (a) any officers, directors, partners, and other employees of the Defendant; (b) any judge assigned to hear this case (or spouse or immediate family members of any assigned judge); (c) any employee of the Court; (d) any juror selected to hear this case; and, (e) any attorneys of record and their employees.

42. Plaintiff reserves the right to modify, expand or amend the above class definition or to seek certification of a class or subclasses defined differently than above before any court determines whether certification is appropriate following discovery.

43. **Numerosity.** Consistent with Rule 23(a)(1), the class is so numerous that joinder of all members is impracticable. Although Defendant is privately held and in control of sales information, Plaintiff believes millions of United States residents purchased Blistex Medicated Lip Ointment within the past three years.

44. **Commonality and Predominance.** Consistent with Rule 23(a)(2), the class shares numerous questions of law and fact in common which predominate over any questions affecting only individual members. These common questions include:

a. Whether Defendant's deliberate design of the Lip Ointment tube which prevents use of nearly a quarter of the product and omission of that fact to consumers violates Illinois Consumer Protection laws;

b. Whether the inaccessibility of nearly a quarter of the product due to the design of the Lip Ointment tube is material to consumer purchasing decisions;

c. Whether Defendant's design of the Lip Ointment tube, the packaging size, and the package label mislead consumers into believing more product is available than can actually be used;

d. Whether Defendant's label indicating ".21 oz (6g)" is a misleading false promise because only 4.65 grams is, on average, accessible;

e. Whether a reasonable consumer would be aware of the product trapped within the dispenser and capable of accessing it;

f. Whether Defendant was aware of the design flaw rendering nearly a quarter of the product inaccessible;

g. Whether Defendant was unjustly enriched by its conduct because Plaintiff and the Class were required to purchase unnecessary, additional tubes of Blistex Medicated Lip Ointment;

h. Whether Defendant intended to benefit by creating a hollow, plastic dispenser rendering nearly a quarter of the product inaccessible and thus, causing Plaintiff and the Class to unnecessarily purchase additional tubes of Lip Ointment;

i. Whether Plaintiff and the Class are entitled to recover damages caused by the loss of nearly a quarter of the product paid for; and,

j. Whether Plaintiff and the Class are entitled to enjoin Defendant from continuing its misleading packaging and/or whether Defendant is required to inform consumers of its design flaw.

45. **Typicality.** Consistent with Rule 23(a)(3), Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and the Class all purchased and used Blistex

Medicated Lip Ointment; all were damaged by the same misleading conduct of the Defendants; and, the relief sought is common to the Class and based in the same causes of action and on the same legal theories.

46. **Adequacy of Representation.** Consistent with Rule 23(a)(4), Plaintiff will fairly and adequately protect the interests of the class. Plaintiff is interested in obtaining compensation for the damage to her and to the Class caused by Blistex's deliberate dispenser design and omission of information indicating a significant portion of Lip Ointment was inaccessible because of the product's design. Plaintiff's interests align and do not conflict with interests of the Class.

47. **Declaratory and Injunctive Relief.** Defendant has acted or refused to act on grounds that apply generally to Plaintiff and other members of the Class, thereby making appropriate final injunctive relief and declaratory relief with respect to the members of the Class.

48. **Superiority of Class Adjudication.** The common class questions predominate over any questions requiring individualized inquiry, making class action resolution of this dispute more appropriate in terms of economy, efficiency, fairness, and equity than other available methods for the adjudication of this dispute. The dispute raised by this Complaint is quintessentially the purpose of the class action mechanism. The damage per Class member in this case is too small to justify individual adjudication of the claim. Without a class action mechanism, no Class member would likely receive compensation for the damages caused by Defendant's deliberate design of the dispenser preventing the use of nearly a quarter of the Lip Ointment and Defendant's omission of its product's design flaw.

CAUSES OF ACTION

COUNT I
VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

49. Plaintiff and members of the Class re-allege and incorporate by reference each allegation contained in the preceding paragraphs.

50. The Illinois Unfair Practices Act, 815 ILCS 505/2, *et seq.* prohibits a corporation from engaging in unfair and deceptive trade practices. These acts include, but are not limited to: "the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act.'"

51. At all relevant times, Blistex Medicated Lip Ointment has been widely available, both in-store and online, to consumers throughout the United States.

52. At all relevant times, Blistex has maintained the same tube design in the United States for its Blistex Medicated Lip Ointment which includes a hard, plastic dispenser that is hollow and capable of collecting Lip Ointment.

53. In other countries, including the United Kingdom, Blistex uses a tube design with a significantly smaller dispenser for products similar to the Lip Ointment.

54. The disputed transaction in this case occurred primarily and substantially in Illinois: Blistex is headquartered in Oak Brook, Illinois; Blistex designed the Lip Ointment in Illinois; Blistex created the tube design and hollow plastic dispenser in Illinois; Blistex's failure to inform the public of the design defect was a result of decisions made by management at Blistex headquarters in Illinois; the product is manufactured and shipped from Illinois throughout

the country; and, the product label lists Blistex's headquarters as "Blistex Inc., P.O. Box 5392, Oak Brook, IL, 60522."

55. At all relevant times, Defendant has listed on the label for Blistex Medicated Lip Ointment the net weight of the product as ".21 oz (6g)."

56. Defendant purposefully designed the Lip Ointment dispenser and, at all relevant times, has been aware that the dispenser is hollow and understood a significant portion of the Lip Ointment would collect therein, rendering it inaccessible to the user. No justification exists for the Lip Ointment's unusual design and alternative, more practical designs were available for Blistex to use.

57. Defendant, knowing the dispenser collected a significant portion of the Lip Ointment rendering it inaccessible, omitted and failed to disclose this fact to Plaintiff and the Class despite its importance to consumer purchasing decisions. Defendant benefited, as intended, from its non-disclosure because Plaintiff and the Class were required to purchase the Lip Ointment more frequently than necessary.

58. Plaintiff and the Class purchased Blistex Medicated Lip Ointment for personal and/or household use.

59. The shape and design of the plastic dispenser is such that it was not evident to Plaintiff or the Class that the dispenser would be hollow and would collect a significant portion of the Lip Ointment. Additionally, unlike the Lip Ointment, the usual product designs for lip care products permit use of essentially all of the product. Even if Plaintiff or the Class had discovered the defect, any attempt to retrieve the Lip Ointment trapped in the dispenser would have destroyed the product packaging and eventually ruin the remaining product.

60. Because the dispenser is hollow, it collected Lip Ointment during use rendering approximately 23% of the Lip Ointment inaccessible and unusable. Plaintiff and the Class unknowingly lost nearly a quarter of the value of each purchase of Blistex Medicated Lip Ointment.

61. The loss of nearly a quarter of the Lip Ointment caused Plaintiff and the Class to unnecessarily purchase additional tubes of Lip Ointment.

62. As a result, Plaintiff and the Class have been injured by Defendant's unlawful conduct.

COUNT II
COMMON LAW FRAUD BY OMISSION

63. Plaintiff and members of the Class re-allege and incorporate by reference each allegation contained in the preceding paragraphs.

64. At all relevant times, Blistex Medicated Lip Ointment has listed the net quantity of the Lip Ointment on its label as ".21 oz (6g)."

65. Blistex intended that Plaintiff and the Class rely on the net quantity on the label when making consumer purchasing decisions, including comparisons between Blistex Medicated Lip Ointment and competitor products.

66. Blistex continued to list the net quantity of the product on the label as ".21 oz (6g)" despite being aware that Plaintiff and the Class could not access approximately 23% of the Lip Ointment because it would become trapped in the plastic dispenser.

67. Blistex failed to inform consumers that nearly a quarter of the Lip Ointment was inaccessible and unusable because of the dispenser design.

68. The design of the Lip Ointment dispenser further concealed the unexpectedly high amount of unusable product because Plaintiff and the Class could not see or feel the additional

product trapped in the dispenser and further, would not expect a significant amount of the product to be inaccessible because of their experience with other common lip care product designs which permit use of essentially all of the product.

69. Plaintiff and the Class lost approximately 23% of Lip Ointment for each tube of Lip Ointment purchased and were required to purchase additional tubes of Lip Ointment prematurely and unnecessarily because of Blistex's design of the dispenser and its failure to disclose the design defect.

COUNT III
UNJUST ENRICHMENT

70. Plaintiff and members of the Class re-allege and incorporate by reference each allegation contained in the preceding paragraphs.

71. Defendant Blistex has been unjustly enriched through additional, unnecessary sales of Blistex Medicated Lip Ointment caused by Plaintiff and the Class unwittingly throwing away nearly a quarter of the Lip Ointment hidden in the hollow plastic dispenser. Defendant's design of the product tube and dispenser rendered nearly a quarter of the product inaccessible and Defendant's failure to inform Plaintiff and the Class of that design flaw contributed to additional, unnecessary purchases of the Lip Ointment.

72. Defendant has benefited from the unnecessary purchase of additional tubes of Blistex Medicated Lip Ointment made by Plaintiff and the Class and should be required to disgorge itself of those gains wrongfully obtained

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class, prays for the following relief:

A. An order that this action may proceed as a class action under the Illinois Code of Civil Procedure, 735 ICLS 5/2-801-807;

B. An order requiring Blistex to pay Plaintiff and the Class statutory damages under the Illinois Consumer Fraud and Deceptive Business Practices Act, both compensatory and punitive;

C. An order requiring Blistex to pay Plaintiff and the Class members actual damages and restitution, with any such amount to include interest;

D. An order requiring Blistex to inform Plaintiff and the Class that nearly a quarter of the Lip Ointment becomes trapped in the dispenser rendering it inaccessible through normal use;

E. An order enjoining Defendant from utilizing the deceptively designed dispenser;

F. An award of attorneys' fees and expenses; and,

G. Any other further or different relief to which the Plaintiff may be entitled.

JURY DEMAND

Plaintiff respectfully demands a jury trial on all matters so triable.

Respectfully submitted,

(LOCAL COUNSEL)

Dated: March 16, 2017

/s/_ROBERT J. PAVICH____________

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